

This matter concluded as a running award and was resolved by settlement hearing on November 18, 1999. As part of the settlement, claimant was paid temporary total

disability compensation, valid and authorized medical treatment was ordered paid and claimant was paid a lump sum award. All other issues remained open upon proper application to the Director unless the parties agreed otherwise. There was no mention in the settlement of the unauthorized medical allowance.

After the running award was issued, claimant filed a request for ongoing medical treatment, including a request to apply the \$500 unauthorized medical limit under K.S.A. 1998 Supp. 44-510 to the cost of a stationary exercise bicycle purchased by claimant. This request was granted in the Order. Claimant's attorney also requested post-award attorney's fees for both himself and his legal assistant in the total amount of \$551 representing 4.1 hours attorney time at \$125 per hour, totaling \$512.50, and 0.7 hours legal assistant time at \$55 per hour, totaling \$38.50, for a total of \$551.00.

In the Order, Judge Sample reduced claimant's attorney's request to \$350, which the judge found to be reasonable under the circumstances. Certain entries contained in the attorney fee bill were discounted by the Administrative Law Judge. The first three entries appeared to deal with an October 25, 1999, telephone call and the review of the October 29, 1999, medical report from Dr. Koprivica, both of which predated the November 18, 1999, settlement. In addition, the Administrative Law Judge reduced the attorney's time on the March 13, 2000, entry which dealt with the pre-hearing visit with the claimant and the attorney's attendance at the preliminary hearing. The Administrative Law Judge felt that 2 hours for that entry was excessive since the preliminary hearing was apparently brief. The Board notes that the preliminary hearing transcript includes only fourteen pages of transcript and three pages of exhibits, none of which are extensively detailed.

K.S.A. 1998 Supp. 44-536(g) allows for post-award attorney's fees "on the basis of the reasonable and customary charges in the locality for such services . . . ."

In this instance, the Administrative Law Judge awarded reasonable attorney's fees after considering the amount of time and effort expended by the attorney to obtain the \$500 unauthorized medical allowance. The Appeals Board finds that decision by the Administrative Law Judge to be appropriate. This Administrative Law Judge is more able to determine what is a reasonable and customary fee in Kansas City and also what would be a proper time allowance for her preliminary hearing. The Appeals Board did not have the luxury of being present at that preliminary hearing and cannot estimate how much time and effort was actually expended. The Appeals Board will, therefore, accept the Administrative Law Judge's determination of the reasonableness of those charges and affirm the award of \$350 in attorney's fees.

The Appeals Board, in reviewing the Order of the Administrative Law Judge, found no indication that she, in any way, questioned the honesty and the integrity of the attorney.

The claimant's attorney further requests that an additional fee be awarded to compensate for the time expended in preparing and submitting the brief to the Appeals Board. The Appeals Board finds, pursuant to claimant's attorney's request, that an additional fee in the amount of \$163.50 should be awarded for the attorney and legal assistant time expended before the Appeals Board.

Respondent is, therefore, ordered to pay claimant's attorney \$350 in attorney's fees for the time expended before the Administrative Law Judge and an additional \$163.50 for the time expended in preparing the brief to the Board.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated March 16, 2000, should be, and is hereby, affirmed. Claimant's attorney is also awarded an additional \$163.50 in fees to be paid by respondent and its insurance carrier.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Keith L. Mark, Mission, KS  
Stephanie Warmund, Overland Park, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director